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MARC SPITZER
COMMISSIONER



ORIGINAL

BRIAN C. McNEIL
EXECUTIVE SECRETARY

MARK SENDROW
DIRECTOR

SECURITIES DIVISION
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ARIZONA CORPORATION COMMISSION

2002 SEP 12

OPEN MEETING ITEM
9/26/02
MEMORANDUM

AZ CORP COMMISSION
DOCUMENT CONTROL

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer

Arizona Corporation Commission

DOCKETED

SEP 12 2002

FROM: Mark Sendrow *MS*
Director of Securities

DOCKETED BY	<i>MS</i>
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DATE: September 12, 2002

RE: Matter of Parizek Capital Management, LLC, *et al.*, S-03478A-02-0000
Proposed Consent Order re Both Respondents

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order to Cease and Desist, Order of Revocation, Order for Administrative Penalty, and Consent to Same by: Parizek Capital Management, LLC, and David Allen Parizek, Jr.

David Parizek and his investment advisory firm, Parizek Capital Management, LLC ("Parizek Capital"), became licensed on March 22, 2001, as investment adviser representative and investment adviser, respectively. Mr. Parizek was and is sole owner, officer, director and managing member of Parizek Capital. Before the end of 2001, Mr. Parizek and the firm notified the Securities Division that they intended to terminate their investment advisory business, and on January 22, 2002 they filed formal requests to withdraw from licensure.

While licensed, respondents formed a Delaware limited partnership, called The Mars Fund, L.P. (the "Mars Fund"), with Parizek Capital as the general partner. The Mars Fund entered into an investment advisory agreement with Parizek Capital. As managing member of Parizek Capital, Parizek planned to manage investment advisory clients' funds through the Mars Fund portfolio.

Respondents provided marketing materials concerning the above business, to approximately 20 potential investment advisory clients, in or about April 2001. Three persons invested a total of \$16,700 in limited partnership interests in the Mars Fund. Between May 1, 2001, and December, 2001, the respondents traded securities using the investors' money in an online brokerage account of the Mars Fund, together with \$10,000 that Mr. Parizek put into the

account. When Mr. Parizek wound up the business, the investors received back a small fraction of their investment funds. The brokerage account records show that the rest of the money was lost in trading activity, or paid to the brokerage firm as trading commissions.

The Securities Division found no evidence that any investor money had been misappropriated.

The proposed order finds violations of the Arizona Investment Management Act. Specifically, in their marketing materials, respondents made materially inaccurate and misleading statements and omissions. These primarily concerned Parizek's past performance as a trader, or the safety of investors' money under Parizek's portfolio management. The statements and omissions are detailed in the proposed order, at pages 3-4. In addition, the respondents accepted investments in the form of cash from two persons, and respondents deposited the cash in an account that was not titled in the name of Parizek Capital as trustee for the investors, and that did not contain solely investors' funds.

The proposed order directs respondents to cease and desist from violating the Investment Management Act, and revokes their licenses to transact investment advisory business. Mr. Parizek and Parizek Capital have each agreed that they will not apply for Arizona registration or licensure in the securities or investment advice fields, at any time in the future. Further, the proposed order imposes an administrative penalty of \$3,000.

The Securities Division believes that the proposed order would protect the interests of investors and serve the best interests of the people of Arizona. The Division requests that the Commission approve the proposed order.

Originator: Amy Leeson

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 WILLIAM A. MUNDELL
4 Chairman
5 JIM IRVIN
6 Commissioner
7 MARC SPITZER
8 Commissioner

9 In the matter of

10 PARIZEK CAPITAL MANAGEMENT, LLC
11 2618 E. Waverly Street
12 Tucson, Arizona 85716

13 -- and --

14 DAVID ALLEN PARIZEK, Jr.
15 2618 E. Waverly Street
16 Tucson, Arizona 85716

17 Respondents

)
) DOCKET NO. S-03478A-02-0000
)
)

) DECISION NO. _____
)
)

) **ORDER TO CEASE AND DESIST,**
) **ORDER OF REVOCATION,**
) **ORDER FOR ADMINISTRATIVE**
) **PENALTY, AND CONSENT TO SAME**
) **BY: PARIZEK CAPITAL**
) **MANAGEMENT, LLC, and DAVID**
) **ALLEN PARIZEK, JR.**

18 Parizek Capital Management, LLC, and David Allen Parizek, Jr. ("RESPONDENTS") elect to
19 waive permanently their right to a hearing and appeal under Articles 7 and 8 of the Arizona
20 Investment Management Act, A.R.S. § 44-3101, *et seq.* (the "IM Act"), with respect to this Order
21 To Cease And Desist, Order of Revocation, Order for Administrative Penalty, and Consent to
22 Same by: Parizek Capital Management, LLC, and David Allen Parizek, Jr. ("Order").
23 RESPONDENTS admit the jurisdiction of the Arizona Corporation Commission ("Commission");
24 neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and
25 consent to the entry of this Order by the Commission.
26 ...

I.

FINDINGS OF FACT

1. Parizek Capital Management, LLC ("PARIZEK CAPITAL"), is a Delaware limited liability company formed in April 2000. Its last known address is 2618 E. Waverly Street, Tucson, Arizona 85716. PARIZEK CAPITAL became an Arizona-licensed investment advisory firm on March 22, 2001, and filed its request to terminate its license on Form ADV-W, on January 22, 2002.

2. David Allen Parizek, Jr. ("PARIZEK"), became an Arizona-licensed investment adviser representative, associated with PARIZEK CAPITAL, on March 22, 2001. PARIZEK filed a request to terminate his license on Form U-5, on January 22, 2002. At all relevant times, PARIZEK has been the managing member of PARIZEK CAPITAL, and its sole owner, officer and director. His last known address is 2618 E. Waverly Street, Tucson, Arizona 85716.

3. In or about January 1999, PARIZEK began trading securities with funds belonging to himself or his family members, using accounts at one or more Internet-based ("online") brokerage firms.

4. In mid-2000 PARIZEK formed respondent PARIZEK CAPITAL, and applied for Arizona investment adviser and investment adviser representative licenses for the firm and himself, respectively. PARIZEK passed the required Series 65 examination on July 17, 2000.

5. Shortly after obtaining licenses in March 2001, RESPONDENTS formed The Mars Fund, L.P. (the "Mars Fund"), a Delaware limited partnership of which respondent PARIZEK CAPITAL was the general partner. In connection with organizing the Mars Fund, RESPONDENTS caused the Mars Fund to make an investment advisory agreement with PARIZEK CAPITAL. As managing member of PARIZEK CAPITAL, PARIZEK planned to manage investment advisory clients' funds through the Mars Fund portfolio.

6. RESPONDENTS wrote, and mailed or delivered, a seven-page solicitation letter to approximately 20 potential investors, in or about April 2001.

1 7. In the solicitation letter RESPONDENTS described PARIZEK's trading method,
2 which he called the "Saturn Method," and announced the formation of the Mars Fund and another
3 entity called The Saturn Fund. RESPONDENTS described these two entities as "hedge" funds.

4 8. In the April 2001 solicitation letter, RESPONDENTS made statements and omissions
5 that were materially inaccurate and misleading, including the following:

- 6 a) In two paragraphs on pages 5 and 6 of the solicitation letter, RESPONDENTS
7 represented to potential clients that the Mars Fund would have little risk, despite their
8 plan to trade in options, to engage in short sales of stocks, and to employ margin.
- 9 b) The only explicit mention of risk of loss is the five words on page 5: "they could
10 even be negative" (referring to total returns on invested funds). The solicitation letter
11 as a whole does not provide a fair and balanced discussion of risks, or provide
12 sufficient information for an investor to evaluate the same.
- 13 c) RESPONDENTS stated that the "potential return rates using the Saturn Method will
14 stay about the same from around \$50,000 on up to at least \$1 million" (capital under
15 RESPONDENTS' management), but they had no reasonable basis for this prediction.
- 16 d) RESPONDENTS claimed in the solicitation letter, that PARIZEK had made total
17 returns from trading of 489% during 2000. They used their 2000 performance claim
18 as the basis for a chart in which they showed the hypothetical returns a Mars Fund
19 investor would have received, had he invested \$10,000 under PARIZEK's
20 management for the year. RESPONDENTS failed to disclose that they made this
21 2000 performance claim with respect to a composite "portfolio," which PARIZEK
22 had not managed in the same fashion in which RESPONDENTS planned to manage
23 the Mars Fund portfolio. In particular, in 1999-2000, PARIZEK and his family
24 members deposited new funds into their accounts, and withdrew funds from their
25 accounts, on numerous dates, whenever they chose to do so. The Mars Fund
26 agreement with its investors stated that PARIZEK CAPITAL would credit any new

1 money deposited to an investor's account, only on the first day of the following
2 month, and would send out checks in response to withdrawal requests, only on the last
3 day of the month in which the request was received. The claim of a 489% trading
4 return for 2000, without disclosing these differences in portfolio management, and
5 what the total return percentage would have been if the family "portfolio" had been
6 managed like the Mars Fund, was inaccurate and misleading.

7 e) RESPONDENTS presented a chart in their solicitation letter, which they told
8 potential customers was a fair representation of the hypothetical performance of a
9 \$10,000 investment managed by PARIZEK for the year 2000, net of investment
10 advisory fees and expenses of the Mars Fund, compared with the performance of
11 three market indices (NASDAQ, NYSE, and Russell 3000). RESPONDENTS did
12 not disclose how these indices were defined, or the degree to which the indices were
13 not fair benchmarks against which to compare PARIZEK's trading in 2000 – which
14 was limited to relatively few, low-priced stocks, and included use of margin, short
15 selling, and investments in derivative securities. This chart was misleading also,
16 because it was confined to the year 2000, which obscured the fact that the equity
17 markets as a whole, and NASDAQ in particular, showed better returns in 1999 than in
18 2000. Because RESPONDENTS made representations concerning PARIZEK's
19 trading returns over the period April 1999 – December 2000 in the solicitation letter,
20 at least that full period should have been included in the chart. In addition, the chart
21 should have included the first quarter of 2001, because RESPONDENTS sent it to
22 potential customers during the second quarter 2001, and leaving out the most recent
23 performance data is misleading.

24 9. Three persons invested small amounts of money in limited partnership interests of the
25 Mars Fund, in or about April, 2001. Each of these investors had received the solicitation letter from
26 RESPONDENTS.

1 10. The total invested in the Mars Fund limited partnership interests by the three investors
2 was \$16,700.

3 11. The investors were friends of PARIZEK and/or his father.

4 12. One investor made his investment of \$5,000, in cash, on or about April 13, 2001.

5 13. RESPONDENTS accepted the cash, and deposited it in Wells Fargo Bank, in a
6 business checking account of PARIZEK CAPITAL over which PARIZEK had sole signature
7 authority.

8 14. One investor made his investment of \$6,700 in the following manner: PARIZEK's
9 father owed the investor \$6,700 prior to the date on which the investor decided to purchase a limited
10 partnership interest in the Mars Fund. When the investor made his decision to invest, he said that
11 PARIZEK's father should repay the outstanding loan, by delivering \$6,700 to the Mars Fund for the
12 investor's account. On or about April 30, 2001, RESPONDENTS accepted two checks totaling
13 \$6,700, representing repayment by PARIZEK's father of the \$6,700 that he owed to the investor, and
14 deposited them in Wells Fargo Bank, in the business checking account of PARIZEK CAPITAL over
15 which PARIZEK had sole signature authority.

16 15. The account into which RESPONDENTS deposited the funds of the two investors
17 just identified, was not an account containing only clients' funds, and it was not maintained in the
18 name of PARIZEK CAPITAL as agent or trustee for the investors.

19 16. On or about May 1, 2001, RESPONDENTS sent a check for \$5,000 drawn on the
20 PARIZEK CAPITAL account at Wells Fargo, to the Mars Fund account at Datek Online.
21 RESPONDENTS credited this amount to the account of the investor who had given
22 RESPONDENTS \$5,000 in cash, in RESPONDENTS' own ledger at PARIZEK's home.

23 17. On or about May 1, 2001, RESPONDENTS sent a check for \$6,700 drawn on the
24 PARIZEK CAPITAL account at Wells Fargo, to the Mars Fund account at Datek Online.
25 RESPONDENTS credited this amount to the account of the investor to whom PARIZEK's father had
26 previously owed \$6,700, in RESPONDENTS' own ledger at PARIZEK's home.

1 18. Between May 1, 2001, and December, 2001, RESPONDENTS traded securities using
2 the investors' money in the Mars Fund account at Datek Online, together with \$10,000 that
3 PARIZEK put into the account.

4 19. On or about November 20, 2001, RESPONDENTS notified the Securities Division
5 that RESPONDENTS intended to cease operating their investment advisory business.

6 20. The Mars Fund investors received back a small fraction of their investment funds
7 from RESPONDENTS, in connection with RESPONDENTS' winding up of the investment advisory
8 business. RESPONDENTS lost a majority of the investors' funds, through the trading they
9 conducted in the Datek Online account of the Mars Fund, and Datek Online deducted a small portion
10 of the investors' funds from the account as commissions for the trades, and other fees.

11 21. The Securities Division found no evidence that RESPONDENTS had
12 misappropriated any investor money.

13 22. Under their agreements with the investors, RESPONDENTS would have received
14 compensation for their activities described above, had the Mars Fund realized any trading gains.
15 RESPONDENTS expected to receive 35% of the gains, paid monthly. The investors paid no sales
16 charge relating to their purchases of Mars Fund limited partnership interests.

17 23. Mailing or delivering the solicitation letter to a potential investor constituted the
18 provision of investment advisory services by RESPONDENTS, which RESPONDENTS did within
19 or from Arizona.

20 24. The sales of limited partnership interests in the Mars Fund constituted transactions
21 involving the provision of investment advisory services by the RESPONDENTS, and such sales took
22 place within or from Arizona.

23 25. The trading activity that RESPONDENTS conducted in the Mars Fund account,
24 constituted transactions involving the provision of investment advisory services. RESPONDENTS
25 did this trading within or from Arizona.
26

26. Revocation of the licenses of RESPONDENTS to transact investment advisory business in Arizona would be in the public interest.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the IM Act.

2. Pursuant to A.R.S. § 44-3202(D), the Commission has the power to bring this action, and to suspend or revoke RESPONDENTS' licenses, notwithstanding their requests for license terminations on January 22, 2002.

3. RESPONDENTS' conduct subjects RESPONDENTS to an order of revocation pursuant to A.R.S. § 44-3201(A)(3) and (A)(13).

4. RESPONDENTS violated A.R.S. § 44-3241 in connection with transactions within or from Arizona involving the provision of investment advisory services, in that they:

a) Engaged in practices described in subsection 3241(A)(4), when they took custody of funds belonging to their investment advisory clients, and deposited them in an account that did not contain only clients' funds and that was not maintained in the name of PARIZEK CAPITAL as agent or trustee for such clients; and

b) Made inaccurate statements or misleading omissions of material facts, in violation of subsection 3241(A)(2), which included but were not limited to:

- Representing that the trading activity of the Mars Fund would carry little risk of loss to investors;
- Omitting a fair and balanced discussion of risks;
- Predicting that PARIZEK as portfolio manager, using the Saturn Method of trading, could generate consistently high returns, with \$50,000 - \$1 million under management, while having no reasonable basis for the prediction;

- Failing to disclose how the management of the Mars Fund portfolio would differ from the management of the family “portfolio” by PARIZEK during 1999 – 2000, particularly with regard to cash deposits and withdrawals, and how the differences in management would have impacted the claimed performance for 1999 – 2000 of the family “portfolio”;
- Representing claimed past trading performance in a chart, and comparing that performance with indices that were not fair benchmarks for comparison to the portfolio under management, without discussing the limitations on such comparison;
- Representing claimed past trading performance in a chart, comparing that performance with market indices, while omitting from the chart nine months of the period for which performance claims were made;
- Representing claimed past trading performance in charts and otherwise, while leaving the most recent calendar quarter out of the discussion.

4. RESPONDENTS’ conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-3292.

5. RESPONDENTS’ conduct is grounds for an administrative penalty under A.R.S. § 44-3296.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the RESPONDENTS’ consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-3292, that RESPONDENTS, their agents, employees, successors and assigns, permanently cease and desist from violating the IM Act.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3296, that RESPONDENTS shall
2 pay, jointly and severally, an administrative penalty in the amount of \$3,000. Payment shall be
3 made by cashier's checks or money orders payable to the "State of Arizona," in installments as
4 follows: \$1,000 on the date of this Order; and \$ 70.00 per month on or before the 1st day of each
5 month beginning on December 1, 2002. Any amount outstanding shall accrue interest at the rate
6 of 10% per annum from the date of this Order until paid in full. If RESPONDENT does not
7 comply with this order for administrative penalties, any outstanding balance may be deemed in
8 default and shall be immediately due and payable in full by cashier's check or money order on the
9 date of this Order.

10 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3201, that the investment adviser
11 license of PARIZEK CAPITAL MANAGEMENT, LLC, is revoked.

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1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3201, that the investment adviser
2 representative license of DAVID ALLEN PARIZEK, JR., is revoked.

3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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7 CHAIRMAN

COMMISSIONER

COMMISSIONER

8 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
9 Executive Secretary of the Arizona Corporation
10 Commission, have hereunto set my hand and caused the
11 official seal of the Commission to be affixed at the
12 Capitol, in the City of Phoenix, this _____ day of
13 _____, 2002.

14 _____
BRIAN C. McNEIL
Executive Secretary

15
16 _____
DISSENT

17 This document is available in alternative formats by contacting Shelly M. Hood, Executive
18 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
19 shood@cc.state.az.us.

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CONSENT TO ENTRY OF ORDER

1
2 1. DAVID ALLEN PARIZEK, JR., and PARIZEK CAPITAL MANAGEMENT, LLC,
3 by David Allen Parizek, Jr., its sole owner, officer, director and managing member: admit the
4 jurisdiction of the Commission over the subject matter of this proceeding, and over the person of
5 PARIZEK and of PARIZEK CAPTIAL. RESPONDENTS acknowledge that they have been fully
6 advised of their right to a hearing to present evidence and call witnesses, and RESPONDENTS
7 knowingly and voluntarily waive any and all rights to a hearing before the Commission, and all
8 other rights otherwise available under Article 7 of the Investment Management Act, or Title 14 of
9 the Arizona Administrative Code. RESPONDENTS acknowledge that this Order to Cease and
10 Desist, Order of Revocation, Order for Administrative Penalty, and Consent to Same by: Parizek
11 Capital Management, LLC, and David Allen Parizek, Jr. ("Order"), constitutes a valid final order
12 of the Commission.

13 2. RESPONDENTS knowingly and voluntarily waive any right they may have under
14 Article 8 of the Investment Management Act, to judicial review by any court by way of suit,
15 appeal, or extraordinary relief resulting from the entry of this Order.

16 3. RESPONDENTS acknowledge and agree that they enter into this Order freely and
17 voluntarily, and that no promise was made or coercion used to induce such entry.

18 4. RESPONDENTS acknowledge that they have chosen not to be represented by counsel
19 in this matter, that they have read this Order, and that they understand all terms it contains.

20 5. RESPONDENTS neither admit nor deny the Findings of Fact and Conclusions of Law
21 contained in this Order. RESPONDENTS agree that, in the event that either RESPONDENT, or
22 any entity of which either RESPONDENT is an officer, manager, or director, or owner of 10% or
23 more of the equity, should apply in the future for any license from the state of Arizona to transact
24 insurance, banking, real estate or mortgage brokerage business, RESPONDENTS will supply a
25 copy of this Order, including their Consent to Entry of Order, to the licensing agency together with
26

1 the license application. RESPONDENTS agree that those agencies may consider this Order in
2 making any decision whether to issue any such license.

3 6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action
4 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
5 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
6 factual basis. RESPONDENTS will undertake steps necessary to assure that all of their agents and
7 employees understand and comply with this agreement.

8 7. RESPONDENTS understand that this Order does not preclude any other agency or
9 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
10 proceedings that may be related to matters addressed by this Order.

11 8. RESPONDENTS each agree that neither of them will apply to the state of Arizona for
12 registration as a securities dealer or salesman, or for licensure as an investment adviser or
13 investment adviser representative, at any time in the future.

14 9. RESPONDENTS each agree that neither of them will obtain or exercise any control
15 over any entity that offers or sells securities or provides investment advisory services, within or
16 from Arizona.

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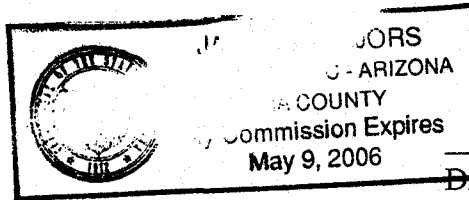
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1 10. RESPONDENTS each consent to the entry of this Order, and agree to be bound fully
2 by its terms and conditions. RESPONDENTS each agree that if either of them breaches any
3 provision of this Order, the Commission may vacate this Order and restore this case to its active
4 docket.



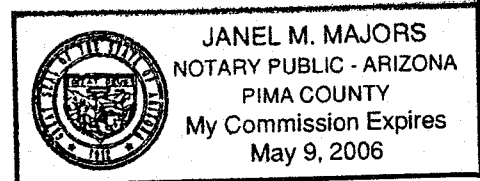
David Allen Parizek, Jr.

DAVID ALLEN PARIZEK, JR.

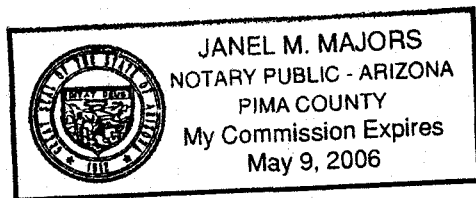
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6
7 SUBSCRIBED AND SWORN TO BEFORE me this 16th day of September, 2002.

Janel M. Majors
NOTARY PUBLIC

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10 My Commission Expires:
11 _____
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14 PARIZEK CAPITAL MANAGEMENT, LLC



David Allen Parizek, Jr.

15
16 By: David Allen Parizek, Jr., sole owner,
17 officer, director, and managing member

18 SUBSCRIBED AND SWORN TO BEFORE me this 16th day of September, 2002.

Janel M. Majors
NOTARY PUBLIC

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21 My Commission Expires:
22 _____
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